



**Office of the Attorney General  
State of Texas**

**DAN MORALES**  
ATTORNEY GENERAL

February 13, 1998

The Honorable Chris Harris  
Chair, Administration Committee  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711

Letter Opinion No. 98-005

Re: Whether a company offering comprehensive complaint investigations must be licensed by the Texas Board of Private Investigators and Private Security Agencies (RQ-980)

Dear Senator Harris:

The Private Investigators and Private Security Agencies Act (the "act") makes it unlawful for any person to engage in the business of or perform any service as an investigations company, guard company, alarm systems company, armored car company, courier company, or dog guard company unless the person is licensed under the act to do so. V.T.C.S. art. 4413(29bb). You describe a business and ask whether the business must be licensed under the act to provide its services.

You tell us that the company offers human resources consulting services to businesses, including the preparation of employment policy and procedure manuals and employee training. The company also offers "comprehensive complaint investigations," which are designed to limit a client's exposure to lawsuits and minimize damages in the event a suit is filed. The company investigates complaints and renders unbiased analyses of their merits. You say that the investigative work is performed mainly by licensed attorneys.

With only limited information about the company and the services it provides, it is impossible for us to determine with certainty whether the company about which you ask must be licensed under the act. It appears to us, however, that the company you describe might fall within the act's definition of an "investigations company." An "investigations company" is:

(A) any person who engages in the business or accepts employment to obtain or furnish information with reference to:

(i) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(ii) *the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;*

- (iii) the location, disposition, or recovery of lost or stolen property;
- (iv) *the cause or responsibility for fires, libels, losses, accidents, damages, or injuries to persons or to property;*
- (v) *the securing of evidence to be used before any court, board, officers, or investigating committee; or*
- (vi) the electronic tracking of the location of any individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(B) any person who engages in the business of or accepts employment to protect one or more individuals from bodily harm through the use of a personal protection officer.

*Id.* art. 4413(29bb), § 2(3) (emphasis added). An investigations company that is not licensed under the act or who does not have a license application pending commits a Class A misdemeanor and also may be assessed a civil penalty of not more than \$1,000. *Id.* § 44.

The act lists thirty exceptions to its application. *Id.* § 3. You ask about the exception which provides that the act does not apply to “an attorney-at-law in performing his duties.” *Id.* § 3(a)(5).

The question of the scope of this exception is one of first impression. In our view, a person who is a licensed attorney operating as an investigations company is not exempt from the act merely because the person is an attorney. The exception for “an attorney-at-law in performing his duties” appears to have been designed to allow attorneys to perform the type of investigative work normally required in the course of rendering legal services, such as the discovery of evidence, witnesses, and facts, without having to be licensed as investigators under the act. We conclude that the phrase “attorney-at-law in performing his duties” means that the exception applies only to an attorney performing investigative work in connection with the practice of law.

What constitutes the practice of law for purposes of the act and whether an attorney is performing investigative work in connection with the practice of law are questions most appropriately decided by a court based on the facts of each case.<sup>1</sup> You describe a company that uses

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<sup>1</sup>We note that in proscribing the unauthorized practice of law, the Government Code defines the “practice of law” as


the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

lawyers to investigate and analyze the merits of complaints. Your description suggests that the company's investigations involve legal analyses of pending or potential causes of action as well as factual investigations of events, parties, witnesses, and the like. In such a case, where the attorney's investigative work for a client includes the giving of legal advice or the rendering of services requiring the use of legal skill and knowledge, a court might determine that the attorney is exempt from licensing under the act. We are unable in the opinion process to make the factual findings necessary to determine whether any particular person or company is performing work that falls within the act or one of its exceptions.

### S U M M A R Y

The exception from the licensing requirements of the Private Investigators and Private Security Agencies Act, V.T.C.S. article 4413(29bb), for "an attorney-at-law in performing his duties" applies to an attorney performing investigative work in connection with the practice of law.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin", written in a cursive style.

Barbara Griffin  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>(...continued)

Gov't Code § 81.101(a). This definition is not exclusive "and does not deprive the judicial branch of the power and authority . . . to determine whether other services and acts not enumerated may constitute the practice of law." *Id.* § 81.101(b). A court might apply this definition to cases arising under the Private Investigators and Private Security Agencies Act. However, as in unauthorized practice of law cases, whether any particular person is engaging in the practice of law for purposes of the act will be determined on a case-by-case basis.